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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91192739
Party	Defendant Blue Athletic Inc.
Correspondence Address	JOE HICKEY BLUE ATHLETIC INC. PO BOX 4642 PORTSMOUTH, NH 03802-4642 joe@denimrack.com
Submission	Answer
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Date	12/22/2009
Attachments	ANSWER TO NOTICE OF OPPOSITION (01104294).PDF (4 pages)(12898 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NORDSTROM, INC. and NIHC, INC.,)	
)	
Opposers,)	Opposition No. 91192739
)	
v.)	Serial No. 77/769311
)	
BLUE ATHLETIC INC.,)	
)	
Applicant)	
)	

ANSWER TO NOTICE OF OPPOSITION

Blue Athletic Inc., Applicant, through its attorneys, Wiggin & Nourie, P.A., denies Nordstrom, Inc. and NIHC, Inc., Opposers, will be damaged by registration of the mark DENIMRACK shown in U.S. Trademark Application Serial No. 77/769311, and answers Opposers' grounds for opposition as follows:

1. Applicant is without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 1 and, therefore, denies them.
2. Applicant is without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 2 and, therefore, denies them.
3. Admitted.
4. Admitted.
5. Applicant is without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 5 and, therefore, denies them.
6. Applicant is without sufficient information or knowledge to admit or deny the allegations set forth in Paragraph 6 and, therefore, denies them.
7. Admitted.

8. Admitted.

9. Applicant admits its DENIMRACK mark is comprised of the terms “denim” and “rack”, and by way of further answer states the Trademark Office assigned the Applicant the pseudo mark “DENIM RACK.” To the extent not otherwise admitted herein, Applicant denies the allegations set forth in Paragraph 9.

10. Applicant admits the word “rack” is used apart from the word “denim” on its website. To the extent not otherwise admitted herein, Applicant denies the allegations set forth in Paragraph 10.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

AFFIRMATIVE DEFENSES

By way of further answer, Applicant asserts the following affirmative defenses:

19. The Notice of Opposition fails to state a claim upon which relief can be granted.

20. There is no likelihood of confusion, mistake or deception because Applicant’s mark and the pleaded registered and common law marks of Opposers are not confusingly similar.

21. Applicant is informed and believes, and thereupon alleges, that there is no likelihood of confusion, mistake or deception because Applicant is informed and believes that Opposers' marks "Rack" and "the Rack" are not distinctive and have not acquired distinctiveness, nor do purchasers associate "Rack" and "the Rack" with Opposers alone.

22. Applicant denies all material allegations of the Opposition that are not expressly admitted.

23. Applicant denies that Opposers are entitled to the relief requested in the Notice of Opposition.

24. Applicant denies Opposers have the exclusive right to use the mark "Rack" or "the Rack"; on in the alternative, Applicant alleges Opposers have abandoned any exclusive rights in "Rack" or "the Rack". Opposers are estopped from asserting any exclusive rights to "Rack" or "the Rack", and Opposers' claims against Applicant are barred under the doctrines of waiver, acquiescence and laches.

25. In the alternative, Applicant submits that pursuant to Trademark Rule 2.133, if the Trademark Trial and Appeal Board finds that Applicant's application is not entitle to registration in the absence of a specified restriction to the involved application or registration, then Applicant requests that it be permitted to amend its application to emphasize the limit of the goods and/or services offered or intended to be offered and the channels of trade through which the goods and/or services are offered under Applicant's mark. Applicant submits that an amended description of goods in substantially the following format should allow the application to proceed with registration: "Online retail specialty store services featuring denim clothing and related accessories; retail specialty stores services featuring denim clothing and related accessories."

THEREFORE, Applicant requests that this Notice of Opposition and opposition proceeding be dismissed with prejudice and Applicant's application be allowed to issue as a registration.

Dated: December 22, 2009

By: /s/ Tracy A. Uhrin /
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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the above and foregoing Answer to Notice of Opposition on:

William O. Ferron, Jr.
SEED IP Law Group, PLLC
701 Fifth Avenue, Suite 5400
Seattle, Washington 98104-7092

by U.S. Mail on this the 22nd day of December, 2009.

/s/ Tracy A. Uhrin /
Tracy A. Uhrin, Esquire

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this Notice is being electronically transmitted to the United States Patent & Trademark Office Trademark Trial and Appeal Board through use of the ESTTA electronic filing system on this the 22nd day of December, 2009.

/s/ Tracy A. Uhrin /
Tracy A. Uhrin, Esquire